



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0010; 4500030114]

RIN 1018-BD54

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Spring Pygmy Sunfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our October 2, 2012, proposed rule to designate critical habitat for the spring pygmy sunfish (*Elassoma alabamae*), under the Endangered Species Act of 1973, as amended (Act). In this document, we propose to add one critical habitat unit (123 hectares (ha) (303 acres (ac)) in Madison County, Alabama, to the critical habitat designation. As a result, our proposed revised critical habitat designation for the species now includes three critical habitat units, totaling approximately 749 ha (1,852 ac), in Alabama. This reopened comment period will provide the public with an opportunity to submit written comments on both the revision described in this document and the October 2, 2012, proposed rule, as well as intervening relevant publications. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published October 2, 2012, at 77 FR 60180 is reopened. We will consider comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**. Comments

submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R4–ES–2013–0010, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit your comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0010, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comments**, below, for more details).

FOR FURTHER INFORMATION CONTACT: William Pearson, Field Supervisor, Alabama Ecological Services Field Office, 1208 Main Street, Daphne, AL 36526; telephone 251-441-5181. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the spring pygmy sunfish that was published in the *Federal Register* on October 2, 2012 (77 FR 60180); the revision to the proposed boundaries

of Unit 1 described in our April 29, 2013, *Federal Register* publication (78 FR 25033); the potential exclusions to the designation that we described in our February 5, 2014, *Federal Register* publication (79 FR 6871); and the new proposed Unit 3 that is described in this document. We will consider information and recommendations we receive from all interested parties. We intend that any final action resulting from this proposal will be based on the best scientific data available and be as accurate and effective as possible.

We request comments or information from any interested party on any aspect of the proposed designation. However, we particularly seek comments concerning:

(1) The reasons why we should or should not designate habitats as “critical habitat” under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Land use designation and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

If you submitted comments or information on the proposed rule during the initial comment period from October 2, 2012, to December 3, 2012; during the second comment period from April 29, 2013, to May 29, 2013; or during the third comment period from February 5, 2014, to March 7, 2014, please do not resubmit them. We have incorporated them into the public record as part of the previous three comment periods, and we will fully consider them in the preparation of our final determination.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—

including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, are available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R4–ES–2013–0010, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Species Information

For information on the spring pygmy sunfish's biology, status, distribution, and habitat, refer to the October 12, 2012, proposed listing and critical habitat rule (77 FR 60180), and the October 2, 2013, final listing rule (78 FR 60766).

Previous Federal Actions

On October 2, 2012, we published a proposed rule (77 FR 60180) to list the spring pygmy sunfish as a threatened species and to designate critical habitat for the species. In that proposed rule, we proposed to designate two critical habitat units, totaling approximately 12.9 kilometers (km) (8 stream miles (mi)) and 654.4 hectares (ha) (1,617 acres (ac)) of spring system habitat and adjacent upland buffer in Limestone County, Alabama. Previous Federal actions occurring before October 2, 2012, are summarized in that proposed rule.

On April 29, 2013, we published a document (78 FR 25033) reopening the comment period on the proposed listing and critical habitat for 30 days. That document requested public comments on amendments to the required determinations section of the October 2, 2012, proposal, the draft economic analysis, and a proposed reduction in the size of the critical habitat designation based on information we received during the original public comment period. Specifically, we proposed to reduce the size of Unit 1 by 27.3 ha (67.6 ac), resulting in a proposed critical habitat designation totaling approximately 12.9 km (8 stream mi) and 627.02 ha (1,549.4 ac).

On October 2, 2013, we published a final rule (78 FR 60766) listing the spring pygmy sunfish as a threatened species.

On February 5, 2014, we again reopened the comment period, for an additional 30 days, on the proposed designation of critical habitat to announce exclusions we are considering to proposed critical habitat Unit 1 (79 FR 6871). In that document, we asked for public comments on excluding lands enrolled in candidate conservation agreements with assurances (CCAAs) in accordance with section 4(b)(2) of the Act. Specifically, we are considering excluding all areas covered by the Belle Mina Farms Ltd., McDonald Farm, and Horton Farm CCAAs based on our partnerships with the landowners and the conservation benefits that these agreements afford the spring pygmy sunfish. We will make the final determination on these exclusions in our final rule.

Critical Habitat

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the spring pygmy sunfish in this document.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found

those physical or biological features (PBFs) essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Evaluation of a Documented New Population of Spring Pygmy Sunfish

In November 2015, surveys conducted by the Geologic Survey of Alabama (GSA) and Service employees on Wheeler National Wildlife Refuge (NWR) in Madison County, Alabama, verified a new population of spring pygmy sunfish in Blackwell Swamp following the documentation of the species at the swamp in September 2015, by researchers from Jacksonville State University. The discovery of the new population is significant because it occurs outside the Beaverdam Spring complex, the only known occupied site on October 2, 2013, when we listed the spring pygmy sunfish as a threatened species under the Act, and increases the number of known metapopulations from one to two. Based on new information gathered during the November 2015 survey, we are revising the proposed designation of critical habitat to include a new unit (Unit 3) in Madison County, Alabama. This new unit contains all of the PBFs for the spring pygmy sunfish. Because of the limited range of the spring pygmy sunfish, we have determined that the new population in Blackwell Swamp and its associated habitat is essential to the conservation of the species and may require special management considerations or

protection. A map of proposed Unit 3 appears under **Proposed Regulation Promulgation**, below.

Proposed Critical Habitat Designation

Based on the above information, we are proposing to revise the proposed critical habitat designation to include Blackwell Swamp as Unit 3. We provide occupancy and ownership tables below that include information on all three proposed critical habitat units.

Table 1. Occupancy of the Proposed Critical Habitat Units for the Spring Pygmy Sunfish

Unit	Location	Occupied?
1	Beaverdam Spring/Creek	Yes
2	Pryor Spring/Branch	No
3	Blackwell Swamp/Run	Yes

Table 2. Ownership of the Proposed Critical Habitat Units for the Spring Pygmy Sunfish

Unit	Location	Private ownership km (mi); ha (ac)	Federal ownership km (mi); ha (ac)	Total length km (mi)	Total area ha (ac)
1	Beaverdam Spring/Creek	5.9 (3.7); 210 (518)	3.5 (2.21); 344 (849)	9.5 (5.9)	553 (1,367)
2	Pryor Spring/Branch	0.2 (0.15); 8.1 (20)	3.1 (1.95); 65 (162)	3.4 (2.1)	73 (182)
3	Blackwell Swamp/Run	0; 0	2.3 (1.4); 123 (303)	2.3 (1.4)	123 (303)
Total		6.1 (3.85); 218 (538)	8.8 (5.56); 532 (1,314)	15.2 (9.4)	749 (1,852)

*Totals may not sum due to rounding

We present a brief description of Unit 3, and reasons why it meets the definition of critical habitat, below.

Unit 3: Blackwell Swamp/Run, Madison County, Alabama

Unit 3 includes a total of 123 ha (303 ac) of Federal land and 2.3 stream km (1.4 mi), all of which is federally owned within the Wheeler NWR in Madison County, Alabama. This unit is located about 4.3 km (2.7 mi) due west of the town of Triana. This unit is 0.96 km (0.6 mi) north of Blackwell Run's confluence with the Tennessee River; approximately 1 km (0.5 mi) south of Swancott Road SW; about 1 km (0.5 mi) west of Landess Circle; and just to the east of B.

Road/County Line Road SW. Unit 3 is currently occupied by spring pygmy sunfish and contains all the PBFs essential to the species' survival and eventual recovery. Unit 3 provides habitat for the spring pygmy sunfish via the spring systems of Blackwell Swamp, which include spring runs and a large spring-fed pool that was enlarged after Blackwell Spring Run was impounded (PBF 1).

There is adequate water quality (PBF 2), water quantity and flow (PBF 3), and a diversity of emergent vegetation (PBF 4) to support the normal life stages and behavior of the spring pygmy sunfish and its prey sources (PBF 4).

Wheeler NWR actively manages water levels in proposed Unit 3 to enhance use by waterfowl. The water in the unit is replenished by surface flow from runoff, a small stream in the northeast corner, and numerous spring seeps of the Blackwell Spring system. The Tennessee River does not influence the spring pool unless allowed to enter the pool through the water control structure, which may occur in the course of waterfowl management. During flood conditions, water inundates and enters secondary channels and sloughs located to the south and southeastern portion of the unit and flows in a southerly direction with the spring run, sometimes overtopping the roads on the west and east side of the unit.

Threats to the spring pygmy sunfish and its habitat in Unit 3 that may require special management or protection of the PBFs include structures, such as boat ramps; an unpaved, gravel-maintained, refuge road (11.7 km; 7.3 mi) circling the unit; and sewer, gas, and water easements, including a City of Huntsville sewer line right-of-way to the east. Additional threats outside and adjacent to the unit include increased agriculture, urbanization, and industrialization activities (such as channel modification for flood control, construction of impoundments, and water extraction) that significantly alter spring flow regime and water quality and quantity;

inadequate stormwater management; water diversion; significant changes in streambed material composition and quality as a result of construction projects and maintenance activities that damage or destroy aquatic vegetation and vegetation in the riparian zone; off-road vehicle use; bridge and road construction and maintenance, and culvert and pipe placement; and other watershed and floodplain disturbances that release sediments or nutrients into the water. Many threats that result in decreased water quality and quantity are likely to be amplified during drought events.

Consideration of Economic Impacts

The spring pygmy sunfish occurs in Unit 3, which is entirely within Wheeler NWR. In areas where the spring pygmy sunfish is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we finalize the proposed critical habitat designation, measures to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process for refuge activities. Therefore, the draft economic analysis prepared for Unit 1 and Unit 2 (78 FR 25033) is not significantly affected by the addition of Unit 3 in proposed critical habitat.

Authors

The primary authors of this document are the staff members of the Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 77 FR 60180 (October 2, 2012) as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. Amend §17.95(e) by revising paragraph (5) in, and adding a paragraph (8) to, the entry proposed at 77 FR 60180 for “Spring Pygmy Sunfish (*Elassoma alabamae*)” as set forth below:

§17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

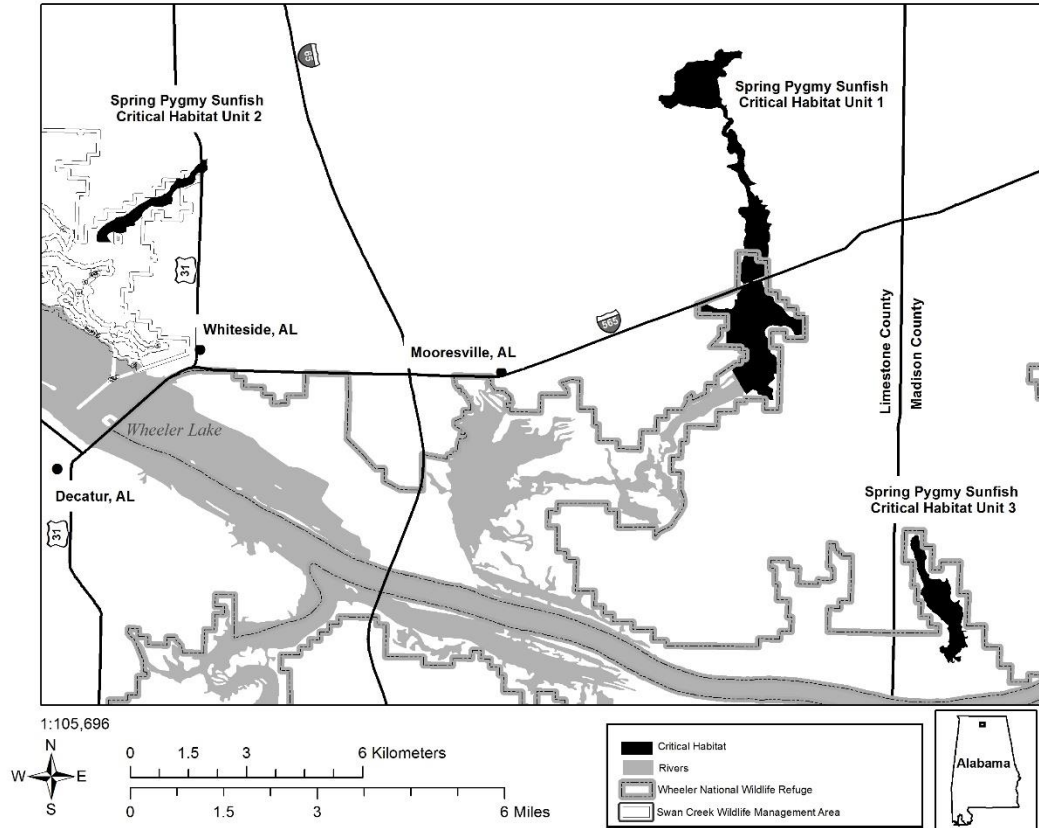
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Spring Pygmy Sunfish (*Elassoma alabamae*)

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(5) Index map of critical habitat for the spring pygmy sunfish follows:

Index Map
Critical Habitat for the Spring Pygmy Sunfish (*Elassoma alabamae*)
Limestone and Madison County, Alabama



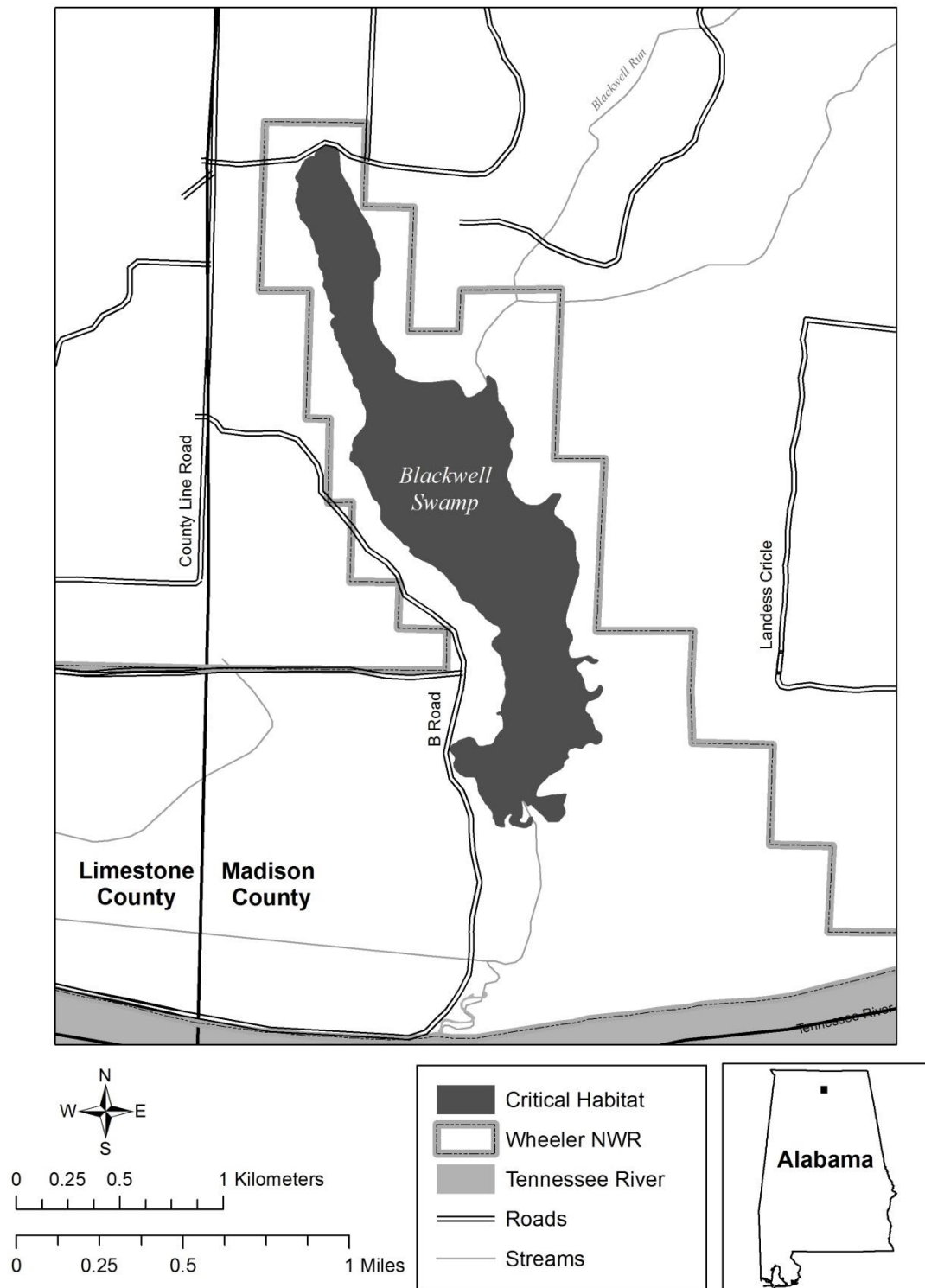
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(8) Unit 3: Blackwell Swamp/Run, Madison County, Alabama.

(i) *General Description:* Unit 3 includes a total of 123 ha (303 ac) of land and 2.3 stream km (1.4 stream mi), all which is federally owned within the Wheeler National Wildlife Refuge. Unit 3 is located approximately 4.3 km (2.7 mi) due west of the town of Triana. This unit is 0.96 km (0.6 mi) north of Blackwell Run's confluence with the Tennessee River; approximately 1 km (0.5 mi) south of Swancott Road SW; about 1 km (0.5 mi) west of Landess Circle; and just to the east of B. Road/County Line Road SW.

(ii) Map of Unit 3 follows:

Unit 3 Critical Habitat for the Spring Pygmy Sunfish Madison County, Alabama



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Dated: 14 Aug 2018

Signed: James W. Kurth

Deputy Director,
U.S. Fish and Wildlife Service,
Exercising the Authority of the Director,
U.S. Fish and Wildlife Service.

Billing Code 4333-15

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